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APPLICATION OF

CPV CUNNINGHAM CREEK LLC

CASE NO. PUE010477

For approval of electrical generating facilities pursuant to Va. Code § 56-580 (D), for waiver of certain filing requirements, for confidential treatment of certain information, and for a certificate of public convenience and necessity pursuant to § 56-265.2, for an exemption from Chapter 10 of Title 56, and for interim authority to make financial expenditures

HEARING EXAMINER'S RULING

February 22, 2002

On August 31, 2001, CPV Cunningham Creek LLC ("CPV") filed an application for a certificate of public convenience and necessity for a new generating facility to be located in Fluvanna County, Virginia. The Company proposes to construct, own and operate a combined-cycle natural gas-fired generating plant consisting of two combustion turbines, two supplementary fired heat recovery steam generators, and a steam turbine. The plant would have a nominal capacity rating of approximately 520 MW and would be capable of operating as a base load generator year round.

A hearing on the application was held January 9, 2002. Appearances were entered and evidence was proffered by CPV, Staff, and Columbia Gas of Virginia ("Columbia Gas"), a participant in this case.

Thirteen public witnesses offered testimony at the public hearing. Written comments were also received. Some of those written comments supported the project, but some of the written comments and all of the public testimony opposed the project. Specific concern was raised with the proximity of the plant to residential neighborhoods and land use,¹ construction traffic,² and the cumulative air emissions from existing and proposed generating plants in the area.³ In that regard several witnesses identified a serious need for additional ozone monitoring stations in Fluvanna County and surrounding areas, purchased and installed by plant developers.⁴ Those witnesses testified that the closest monitoring station was over 100 miles away in Roanoke.⁵

¹Transcript 27, 64-71, 73, 95.

²*Id.* at 28, 61.

³*Id.* at 29, 36, 51, 57, 61, 64-71, 73, 74-75, 79, 84, 87-89, 96, 104.

⁴*Id.* at 32, 37, 73, 92.

⁵*Id.* at 37.

Other witnesses raised concerns with the project's impact on the community's water supply which will be drawn from the Rivanna River, and the wastewater system dedicated to serving the Lake Monticello community at full build-out.⁶ Another witness raised concern with noise pollution.⁷ Two witnesses raised concern with evacuation of the Lake Monticello gated community in case of an emergency at the plant.⁸

The Commission has remanded another case in which a developer proposed to construct and operate an electric generation facility in Fluvanna County.⁹ The Commission concluded that pursuant to its authority granted under applicable statutes, Va. Code §§ 265.2, 56-580 D, and 56-46.1, certain environmental issues raised in that case had not been adequately addressed, and remanded the case to the Hearing Examiner to receive additional evidence. Some of the issues to be addressed in that remand are similar to several of the issues raised by the public witnesses in this case, including concern with the cumulative effect on air quality from existing and proposed facilities, water usage, traffic, and the adequacy of the emergency response plans. I therefore find that the record in this case should be reopened to receive additional evidence on the issues identified above.

I recognize that the General Assembly also has a bill¹⁰ before it that could affect the scope of the Commission's consideration in environmental matters. However, I find that this case should be moved forward now, rather than held back to determine the impact of pending legislation. If such legislation passes it may no longer be necessary to reopen this record, and the hearing scheduled below may be cancelled.

Further, the Virginia Department of Environmental Quality ("DEQ") did not participate in this case as a party, but did provide Staff with Comments and Recommendations from its coordinated review with other agencies concerning the environmental impact of the project. Considering its expertise in the areas to be addressed, the DEQ should also be invited to file any additional comments or testimony that it may desire. Accordingly,

IT IS DIRECTED THAT:

- 1) On or before March 22, 2002, CPV shall file additional supplemental testimony addressing the specific issues identified above;
- 2) On or before April 5, 2002, Staff and Columbia Gas may file additional supplemental testimony on those same issues;

⁶*Id.* at 41, 61, 75-76.

⁷*Id.* at 59.

⁸*Id.* at 83, 101.

⁹*Application of Tenaska Virginia Partners, L.P. for approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE010039, Order (January 16, 2002) ("*Tenaska*").

¹⁰2002 General Assembly, Senate Bill 554.

3) On or before April 5, 2002, the DEQ may also file any additional comments or testimony;

4) On or before April 15, 2002, CPV may file rebuttal testimony; and

5) A hearing to receive limited evidence on the issues identified herein will be held on April 23, 2002, beginning at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia.

Deborah V. Ellenberg
Chief Hearing Examiner